IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2606 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NILIMABEN BHUPENDRABHAI MODI GURADIAN OF CHETALIBEN

Versus

LIYAKATKHAN IBRAHIMKHAN PATHAN

Appearance:

1. First Appeal No. 2606 of 2004

MR MTM HAKIM for Appellant No.

NOTICE SERVED for Respondent No. 1-2,4

MR SHALIN N MEHTA for Respondent No. 3

NOTICE SERVED BY DS for Respondent No. 3

MR DAKSHESH MEHTA for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 25/01/2005

ORAL JUDGEMENT

1. Chetaliben Bhupendrabhai Modi, the minor appellant, suffered injuries in a road traffic accident involving a truck and a two wheeler. She filed claim

application No. 166 of 2002 before the Motor Accident Claims Tribunal, Bharuch, claiming compensation under Section 166 of the Motor Vehicles Act, 1988 ["the Act" for short]. She also made an application Exh. 5 in the said proceedings for compensation of Rs.25,000=00 under Section 140 of the Act. The learned advocates for both the insurance companies made an endorsement on the said application that the policy was confirmed and they had no objection if the application was granted. However, the Tribunal dismissed the application observing that it was very difficult to hold that the certificates disclose that the claimant suffered from permanent partial disability. The appellant has, therefore, filed this appeal under Section 173 of the Act

2. When the appeal came up for admission on 26th November, 2004, notice for final disposal was issued by A.M. Kapadia, J.

3. All the respondents have been served. The appeal is, therefore, admitted and taken up for immediate hearing.

4. The learned advocates for the insurance companies are present and I have heard them. It appears that the claimant had suffered the fracture of left parieto temporal bone and there was also an injury on the head. In the facts and circumstances of the case the Tribunal was not justified in dismissing the application.

5. The appeal is, therefore, allowed. The order of the Tribunal is set aside and the application for compensation under Section 140 of the Act filed by the appellant is allowed. The owners of the two vehicles are held, jointly and severally, liable to pay to the appellant/claimant Rs.25,000=00 [Rs.Twenty Five Thousand only] as compensation with interest at the rate of 9% from the date of the application. The Insurance companies are held liable to satisfy the award. The Tribunal shall make appropriate orders for investment/disbursement when the amount is deposited. No order as to costs.

[M.C. PATEL, J.]

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